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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,519	10/12/2001	Steven E. Robbs	JVI01-01	3866
7590	11/18/2003		EXAMINER	
Angus C. Fox, III 4093 N. Imperial Way Provo, UT 84604-5386			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 11/18/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/977,519	ROBBS ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
  - 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 and 16-20 is/are rejected.
- 7) Claim(s) 7-9,21 and 22 is/are objected to.
- 8) Claim(s) 1-22 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_ .

**DETAILED ACTION**

***Election/Restrictions***

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***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, 16-22, drawn to a method, classified in class 426, subclass 637.
- II. Claims 10-15 drawn to an apparatus classified in class 99 subclass +.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed could be used to pulverize other materials and direct them into an enclosure. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Art Unit: 1761

During a telephone conversation with Mr. Fox on 11-04 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9, 16-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(a) as being anticipated by Forsythe et al. (20020136839 A1).

Forsythe et al. disclose a process as in claims 1, 2 and 4 of applying a solid, sprout-inhibiting (ssic) compound (chloropham), which is in a solid state to tubers, in an enclosure using an air stream which is ducted into the tuber storage space, and pulverizing the spic (chloropham) and introducing it into an air stream, allowing a powder to filter through the stacked tubers (abstract and page 3). The ssic is

considered to filter through because the aerosol of Forsythe et al. is directed into the vegetable storage space and must be deposited on the potatoes at some point. The CIPC particles can be introduced into a stream of air to make an air suspension, which can be the air circulation stream of a storage facility (pages 2 and 3, para. 0035). The micronizer can be a hammer mill as in claim 4 (page 2, para. 0026).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5, 6 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Forsythe '839.

Claim 3 requires that the pulverization of the ssic is done using an impact mill and that the airstream is provided by a screw-type compressor as in claim 5. However, in a method claim the particular apparatus is not given weight. Forsythe et al. disclose the use of a micronizing device. Nothing is seen that such a device does not accomplish the same function as the claimed impact mill.

Claim 5 further requires the use of a screw-type compressor. As above the particular apparatus is not given weight in a method claim. The reference to Forsythe '839 also uses compressed air when micronizing the CIPC (fig. 1 and para. 0025). Therefore, it is seen that the air is compressed in some manner when micronizing the

chloropham. Forsythe '839 cools the airstream by the use of ice as in claim 6 (para. 0027, lines 9-11). Therefore, it would have been obvious to cool the airstream as disclosed and to use other micronizing devices such as an impact mill and other types of compressors for their known functions.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forsythe et al. '839.

Claim 16 further requires providing a pressurized airstream that is directed into the chamber. Forsythe et al. disclose that particles can be introduced into a stream of air of the proper velocity and volume to form a stable air suspension (para. 0035). It is seen that this air stream would have had to be under some pressure in order for it to move at a proper velocity and volume to move the particles through the air. Therefore, it would have been obvious to use pressurized air to direct the air into the chamber containing the tubers.

The further limitations of claims 17 –20 have been discussed above and are obvious for those reasons. It would have also been obvious to combine these limitations with the use of a pressurized air stream as in claim 16, for the reasons stated in claim 16.

#### ***Allowable Subject Matter***

Claims 7-9, 21, 22 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 11-11-03

  
HELEN PRATT  
PRIMARY EXAMINER